

**General Information Letter:** Treatment of Financial Asset Securitization Investment Trusts and consequences of elections under federal check-the-box regulations.

February 20, 1998

Dear:

This is in response to your letter dated February 19, 1998, in which you request a letter ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you have stated the following:

- 1) Does Illinois recognize Financial Asset Securitization Investment Trusts? Does Illinois follow federal law with respect to these entities? If not, how does Illinois tax them?
- 2) If a trust makes a "check-the-box" election under federal law to be treated as a corporation for federal tax purposes, does the entity need to make an additional election under Illinois law for Illinois tax purposes or is the federal election respected?

### **Ruling**

### **FASITs**

Section 860H of the Internal Revenue Code provides that:

(a) TAXATION OF FASIT. -- A FASIT as such shall not be subject to taxation under this subtitle (and shall not be treated as a trust, partnership, corporation, or taxable mortgage pool).

(b) TAXATION OF HOLDER OF OWNERSHIP INTEREST. -- In determining the taxable income of the holder of the ownership interest in a FASIT --

(i) all assets, liabilities, and items of income, gain, deduction, loss, and credit of a FASIT shall be treated as assets, liabilities, and such items (as the case may be) of such holder.

Under Section 203 of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 *et seq.*), computation of net income, on which the Illinois income tax is based, begins with the adjusted gross income (for individuals) or taxable income (for all other taxpayers) properly reported by the taxpayer for federal income tax purposes. Under this provision, a FASIT would have no Illinois net income because it has no federal taxable income, while the owners of the FASIT would include all items of its income in the computation of their Illinois net income as if they had received the income directly.

#### Check-the-Box

Section 102 of the IITA provides:

Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.

Section 1501(a)(4) of the IITA provides:

The term "corporation" includes associations, joint-stock companies, insurance companies and cooperatives. Any entity, including a limited liability company formed under the Illinois Limited Liability company Act, shall be treated as a corporation if it is so classified for federal income tax purposes.

Accordingly, any entity which elects to be treated as a corporation for federal income tax purposes under the check-the-box rules is automatically treated as a corporation for purposes of the Illinois income tax.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely,

Paul S. Caselton  
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